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WORLD CONFERENCE AGAINST RACISM,
RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE

Preparatory Committee
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Item 6 of the provisional agenda

REVIEW OF REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Preparatory Committee the study "Racial discrimination, xenophobia and intolerance against migrants", prepared by Ms. Gabriela Rodriguez Pizarro, Special Rapporteur on the human rights of migrants, pursuant to Commission on Human Rights resolution 1999/44.

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Annex

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Introduction

1. Commission on Human Rights resolution 1999/44 invited the Special Rapporteur on the human rights of migrants to contribute to the identification of major issues to be considered by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. At its fifty-sixth session, the Commission adopted resolution 2000/48 entitled "Human rights of migrants". In that resolution, the Commission encouraged the Special Rapporteur to continue her work of overcoming obstacles to the full and effective protection of the human rights of migrants, as set forth in resolution 1999/44, and referred to key questions relating to her mandate.

2. In its resolution 2000/48, the Commission recalled General Assembly resolution 40/144 of 13 December 1985, by which it approved the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, and indicated its concern at the manifestations of racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrants in different parts of the world, strongly condemned all forms of racial discrimination and xenophobia related to access to employment, vocational training, housing, schooling, health services and social services, as well as services intended for use by the public, and welcomed the active role played by governmental and non-governmental organizations in combating racism and xenophobia and assisting individual victims of racist acts, including migrant victims.

3. The Special Rapporteur has therefore considered it of the utmost importance for her to become involved in the preparatory work for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, specifically the work of the Preparatory Committee at its second session. At the first session, the Special Rapporteur drew attention to the high incidence of cases of discrimination and violence against migrant women. In this document, the Special Rapporteur would like to highlight a few critical aspects affecting migrants which in many cases lead to discrimination, racism and intolerance against migrants.

4. The Special Rapporteur would like first of all to note that, because of the absence of migration policies conducive to regular migration, very few cases of discrimination and violence are reported and even fewer are the subject of a formal complaint. The absence of migration policies also paves the way for exploitation and abuse and for traffic in migrants and traffic in persons.

5. In view of the prevailing lack of protection for the rights of this segment of migrant populations, there is a need to discuss the concepts contained in human rights instruments, especially those whose provisions relate to the status of migrants, migrant workers, violence against migrant women and girls and unaccompanied minors, together with their implications for the responsibilities of States. A further question is whether the forums available for intersectoral dialogue, between Governments, societies and the international community, in which the migrants themselves are involved, offer viable opportunities for seeking remedies for the unprotected situation of this large segment of the world's population. According to International Labour Office statistics, there are 150 million migrants in the world today.

6. Drawing on previous discussion, this document gives some suggestions on how to prevent discrimination and violence against migrants, by improving the channels by which such practices can be corrected. One important means of achieving this is to allow migrants the opportunity to communicate what they experience before, during and after their transfer. Another is empowering them to do that by making their views known in the forums where decisions are made specifically with respect to resolution 1999/44, paragraph 6.

7. The last part of the document contains some recommendations for designing a strategy to help redress violations of the human rights of men and women migrants, in particular the many forms of discrimination against them. Particular attention is paid to forums for dialogue as an important means for migrants and their organizations to make themselves heard. They are seen as a strategy for overcoming the vicious circle of victimization, by recognizing the strengths and skills which migrants possess for defending their rights.

8. The Special Rapporteur therefore believes in the importance of participating actively in all the preparatory meetings and discussion groups whose task is to provide the outline for a declaration and plan of action to be discussed in Durban. She has made an effort to participate personally in all the preparatory meetings, and, where this has not been possible, has contributed by sending a message indicating her deep concern at the acts of racism, discrimination and xenophobia which are occurring with increasing frequency against migrant women, children and men.

9. The Special Rapporteur accordingly took part in the Regional Seminar of Experts on preventing ethnic and racial conflict in Africa, held at Addis Ababa from 4-6 October 2000, and the Latin America-Caribbean Regional Seminar of Experts on economic, social and legal measures to combat racism with particular reference to vulnerable groups, held in Santiago, Chile, from 25-27 October 2000. The Special Rapporteur sent a communication with conclusions and recommendations for the Regional Conference of the Americas in preparation for the World Conference, held at Santiago, Chile on 4-5 December 2000, and attended and contributed to the intergovernmental preparatory meetings held at Dakar, Senegal from 22-24 January 2001 and Tehran, Islamic Republic of Iran, from 19-21 February 2001. She has also participated in various satellite meetings for the Conference, such as the meeting organized in Segovia, Spain, from 16-18 February 2001 on human rights and migratory flows.

10. In accordance with the above-mentioned resolution, the Special Rapporteur began her activities by inviting States, intergovernmental organizations, international organizations and non-governmental organizations to provide her with any information which might be of relevance to her mandate. In response to this appeal, the Office of the United Nations High Commissioner for Human Rights has received information from various sources, which is being analysed. The Special Rapporteur, who took up her mandate in 1999, has completed her first mission, a visit to Canada in September 2000, where she was able to collect information of important interest by personally interviewing a large number of migrants of different national origins.

11. Based on her participation in such meetings and the information collected and interviews conducted since her appointment in 1999, the Special Rapporteur wishes in this document to place on record the issues of concern to her regarding the inevitable relationship between

migration, racism, xenophobia and discrimination. She wishes to express her concern at the link between the traffic in migrants, the traffic in persons and racism, racial discrimination, xenophobia and all forms of intolerance specifically affecting migrants in countries throughout the world. The Special Rapporteur also wishes in this document to analyse the progress made regarding the issue of migrant women and the main topic of concern to the World Conference. She submitted for consideration to the first session of the Preparatory Committee, which took place in Geneva in May 2000, a report entitled "Discrimination against migrants - migrant women: in search of remedies" (A/CONF.189/PC.1/19), which analyses the causes and consequences of the discrimination to which migrants are often subjected.

I. DISCRIMINATION AND XENOPHOBIA AGAINST MIGRANTS

12. Based on the definition of discrimination as being "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (International Convention on the Elimination of All Forms of Racial Discrimination, art. 1, para. 1), the Special Rapporteur wishes in this context to draw the attention of the World Conference to the impossibility of addressing the question of migrants' human rights without referring to the vicious circle: migration - racism - xenophobia. The abuses being committed with increasing frequency in transit countries and countries of destination, most of which have well-established democratic traditions, are not perceived by their institutions as warnings that xenophobic outbreaks are on the rise. The Special Rapporteur would like to draw attention to the migrants' situation of social exclusion and extreme poverty and the fact that their desperation is compounded by threats to their relatives and debt bondage in their countries of origin.

13. Xenophobic and racist attacks on migrants are definitely connected with their non-national status and in many cases with the absence of legal channels for migration, which lead to irregular migration and which generally also produce anti-migrant responses in society. The problem of discrimination also arises when conditions of labour migration involve situations of abuse, not only by individuals and groups connected with organized crime, which sell identity papers to potential migrants, but also by employers who, to avoid social security payments or taxes in their countries, hire undocumented workers, termed "illegal" by the migration authorities; the victim is then criminalized or penalized while both the traffickers and employers take advantage of the lack of legal, social and economic protection for undocumented workers and remain unpunished.

14. The criminalization of undocumented migrants, for the offence of being in a country without proper papers, makes them vulnerable to potential racist or xenophobic acts in the societies of the countries involved. Society distorts their situation, regarding them as "delinquents", and is quick to connect them with drug trafficking or robbery. Their undocumented status is not the means but the consequence that makes many migrants vulnerable to the point of crime becoming easy prey for criminal networks. We have recently seen, in a European country, how an ordinary crime was quickly attributed to a migrant minority on the increase in this particular country. This was the result of a grass-roots movement in the region led by certain groups against immigrants in the area, especially immigrants of Albanian origin.

The Special Rapporteur wishes to draw the attention of the World Conference and international society in general to the danger of this type of reaction, not only for migrants, but also for the migrants' societies of destination, in which the patterns of individual and group behaviour being established will have a negative impact on their children's upbringing as xenophobic models are handed down to them by adults and discriminatory sectors of society.

15. For all these reasons, it is of critical importance to make our societies aware of the real causes of migration, which affect all of us in the global village. Structural adjustment, neoliberalism and market conditions favouring only a small number of nationals, together with social and economic inequality cause people to migrate in search of better opportunities. However, it cannot be said that economic factors are the sole cause of migration in search of work; social and educational factors and social injustice also play a role in the decision to leave. Apart from the fact that the countries of the North, the most economically-developed countries, need skilled labour, whether inexpensive or professional, our topic of concern is the effective protection of the human rights of migrant men and women. An ideal voluntary departure process is an organized, formal system of migration in which everyone, the receiving country, the migrants themselves and the country of origin, stands to benefit. The need for equality and justice in working conditions should be borne in mind by all countries requiring migrant labour today.

16. The Special Rapporteur also draws the attention of the World Conference to a factor which was mentioned at all the meetings she attended and in all the countries she visited which receive migrants. The idea is gaining credence that migrants are needed as a labour force to offset the population decline or ageing of the economically-active population in the receiving countries. Although the Special Rapporteur has attempted, since taking up her mandate in 1999, to highlight the positive nature of migration and the valuable contribution it involves for both countries of origin and receiving countries, she wishes to express her concern at the use of migrants merely as necessary labour and a means for developed industrial societies to maintain their standard of living, which would be difficult to attain without such labour given the lack of replacement capacity of such countries and regions.

17. Migrants are people and, as such, have certain inherent rights. These rights entitle them to the same rights as the rest of the population, especially as they are making a positive contribution to countries' economies and cultural wealth. This ideal, however, will never be reached without the support of the migrants' countries of origin, which have a duty to support their nationals even when they are living abroad. Migrants' countries of origin must recognize the importance of the economic contribution they receive from their nationals who have emigrated to other countries in the form of payments to their families back home.

18. We must not forget that, although migratory flows are not a product of the century which has just ended, recent data shows us that migration has increased in recent decades, leading to growing concern among Governments, civil society and international intergovernmental organizations. Some of the causes of movements of persons within and outside of national frontiers are extreme poverty, racial discrimination, internal armed conflicts, lack of opportunity, discrimination against women and family reunification. Consequently, such migratory flows have an important impact not only on internal social and political relations, but also on relations

between receiving countries and countries of origin. There are approximately 150 million people temporarily living outside their country of origin today. They include 97 million migrant workers, according to International Labour Organization (ILO) estimates.

19. The Special Rapporteur therefore wishes to draw the attention of the World Conference to the need for a serious and in-depth approach to this question. Although in the one and a half years since her mandate began she has seen progress in the attitude of States, in recognizing the inevitable link between migration, racial discrimination, xenophobia and intolerance, much remains to be done to combat the spectres of intolerance and discrimination that are negatively affecting the main urban centres as the world enters the twenty-first century. We must also not forget that the violation of migrants' human rights is one of the new, modern forms of human rights violation. If we really wish to make a serious effort to put an end to such violations, the only way to do so is to recognize their existence and our determination to resolve them, and this is the step we must take in Durban.

20. The criminalization of the victims of the traffic in migrants and traffic in persons are specific human rights violations of our time, which bring shame on all of humanity as we enter the twenty-first century. The Special Rapporteur also wishes to make this clear, in order to refute those who hold that racism was overcome in the century that has just ended, and refuse to address the violations occurring today.

21. To that end, the Special Rapporteur wishes to draw the attention of the World Conference to the following issues: migrant women, traffic in persons, unaccompanied minors and undocumented persons.

II. MIGRANT WOMEN

22. For the above reasons serious consideration should be given to the situation of migrant women, in particular women heads of household who leave their environment behind in order in order to help raise and educate their children, whose vulnerability (which should not be seen as weakness), stems from the double discrimination to which they are subjected, both as women and as migrants.

23. In many cases women are forced to leave their own children behind in order to take care of the children of other persons and thus be able to give their own an adequate education and some prospect of a decent life. In particular, the question of domestic workers should be revisited in order to address the abuses and violations of basic human rights which they suffer as a result of discrimination, xenophobia and, in many cases, due to their different ethnic and racial origin. Efforts should also focus on the situation of migrant women who work in border areas and are frequently discriminated against and subjected to a range of abuses, for example wage discrimination, due to their national, and at times racial, origin.

24. Migrant women's feelings of being uprooted go together with feelings of loneliness. The high hopes that organized crime agents can create for desperate mothers and the vulnerability of undocumented migrant women make them easy prey for the agents and expose them to high-risk situations in the context of irregular migration. In many cases, this combination involves

detention, debt bondage, falling into the hands of smugglers and being threatened into performing degrading or slavery-like labour, in violation of the Declaration on the Elimination of Violence against Women.

III. MIGRANT CHILDREN

25. With regard to the question of unaccompanied minors, it must be pointed out that many families in countries of origin are forced to send their children abroad to study or work owing to the lack of opportunities in those countries and the many opportunities offered to heads of household by the agents of transnational organized crime. In the majority of cases, these minors are abandoned by agents in transit countries or the host country after the families have paid large amounts of money. These minors run the risk of being subjected to serious abuses and even sexual, degrading and slave labour. In other cases, they are detained, expelled or deported even though they are victims.

26. During detention, which often takes place in centres for adults, for prolonged periods lasting in some cases for months or even years, the fundamental rights of these minors are frequently violated. The cycle of clandestinity and irregularity in which large numbers of migrants become trapped, in some cases as a result of the lack of information and, in others, because of bureaucratic red tape, is starting to be handed down to the children. In many cases, access to health care is denied to the children of migrants and this is contrary to the Convention on the Rights of the Child. Disregarding biased interpretations of the Convention to avoid obligations, it cannot be forgotten that children in this situation are very likely to fall into the hands of traffickers and to be forced into sexual slavery.

27. As part of this analysis, the Special Rapporteur draws particular attention to the cases of children who are born in the host State and whose parents are in an irregular situation. If the host State forces the parents to leave the country, the child is being denied the right to develop as a national of the State where he was born (when the State in question uses the jus soli criterion for determining nationality), even though the State grants this right to all other children born in its territory. The Special Rapporteur wishes to draw the attention of Governments to the particular situation of migrant women domestic workers. Reports are increasingly being made of sexual abuse by the employers of these persons as a result of the lack of protection in host countries and inequality between employer and worker. There is an alarming number of cases of births in which it is claimed that the father is the employer, although he does not recognize the child. These children, whose numbers are increasing, are unprotected and in many cases discrimination is the result. This result must be analysed in order to find a solution which will provide protection for a group of children born as a result of the abuse of domestic workers by their employers.

28. The Special Rapporteur also wishes to draw attention to discrimination against migrant women and children in detention centres. She considers this measure to be unjust and necessary only in cases of criminal activity by adults, and wishes to draw attention to rapes in custody and other forms of sexual violence against undocumented women belonging to minority groups, as well as the fact that such violations go unreported. This phenomenon is, unfortunately, not unconnected to the link which exists between violence against women and forms of

discrimination, xenophobia and intolerance. For this reason, the Special Rapporteur believes that there is an urgent need for a code of conduct for officials and private guards, to fill the gap found in many countries.

29. The Special Rapporteur has received many reports of discrimination and abuse in this context. Consequently, it is one of the elements which she considers to be extremely important for her country visits. She wishes to appeal to countries and to community associations working for the defence and protection of migrants' human rights to facilitate the reporting of cases of abuse and discrimination and to prevent such reports being used as negative or dissuasive factors in evaluating applications for residency in host countries. In many cases, migrants in detention or holding centres awaiting a decision in their cases cannot report certain abuses for fear of affecting their case negatively. Individuals who are frightened into silence are subject to serious psychological repercussions.

IV. TRAFFIC IN MIGRANTS

30. The Special Rapporteur wishes to draw the attention of the World Conference to the relationship between the traffic in migrants and discrimination, xenophobia and racial discrimination. Bearing in mind that traffic in migrants and traffic in persons affect precisely those groups that are excluded in developed societies and in less economically-developed countries, it is important to note that the traffic in persons represents one of the new forms of human rights violation. This fact points up the link between the traffic in persons and discrimination, racism and xenophobia, in that these population groups, the victims of organized crime, are stigmatized as offenders and no consideration is given to their victim status.

31. During 1999 and 2000 various tragic events occurred which resulted in losses of human live and in which "mafias" of traffickers in persons were ultimately or initially involved. Boatfuls of persons hoping for a better future, most of whom had been deceived as to their prospects on arrival, were taken directly to detention centres or ordinary prisons to await a decision on their case. Discrimination in such cases is becoming increasingly obvious as the victims are criminalized and the alleged perpetrators of this new form of human rights violation go unpunished. In other cases, certain societies have reacted in a racist and xenophobic manner to such persons, who are first and foremost victims. The Special Rapporteur wishes to draw the attention of the World Conference to the danger of certain attitudes displayed by political leaders who stigmatize migrants, thereby causing impulsive and prejudiced reactions that may lead to serious human rights violations.

32. For this reason, the Special Rapporteur also wishes to take the opportunity provided by the World Conference to appeal to States to establish penalties for the perpetrators of transnational crime, specifically the traffic in persons, in their respective countries. States cannot remain idle in the face of a practice which is costing the lives of thousands of people.

V. CONCLUSIONS AND RECOMMENDATIONS

33. In the few months remaining before the Durban conference takes place, the Special Rapporteur wishes to note that the time has come to go beyond mere reporting and to make concrete proposals based on the joint reponsibility of States of origin, transit and destination, so

that migration will be seen as a contribution to societies and not as a phenomenon providing new opportunities for human rights violations, while the actual perpetrators remain unpunished. The preparatory meetings and regional meetings of experts have produced a great number of proposals, which must now be put into practice.

34. In order to combat the racial discrimination, xenophobia and intolerance which affect a great number of the estimated 150 million migrants in the world every day, information campaigns should be conducted to highlight the positive factors of migration when it takes place under regular conditions precluding abuses on the part of employers and unscrupulous traffickers in persons who are clearly enjoying the positive aspects of migration. The negative, criminal picture of migration must be ended and migrants' contributions to both countries of origin and host countries recognized. Positive aspects such as growth in production (agriculture), and therefore profits, in many sectors, and the receiving countries' need for the labour which they themselves lack, must be highlighted in the countries where they occur.

35. All of us, civil society, non-governmental organizations and academic institutions, must support States in creating educational forums beginning at the school level, aimed at avoiding racial discrimination, xenophobia and intolerance towards migrants. States must recognize the inevitable migration-xenophobia-discrimination link if they are to combat this type of violation of fundamental human rights.

36. Migrant populations generally suffer from structural discrimination involving various forms of exclusion and reduced opportunities for employment. The Special Rapporteur appeals to those countries which have not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to take steps to do so. This important instrument provides specific elements regarding protection of nationals abroad, vulnerability to abuse, slavery-like practices and the traffic in persons. At the time of preparation of this report, 16 States have ratified the Convention. Only four more ratifications are needed for this important instrument for the protection and defence of migrants to enter into force. However, we must not leave it at that if we wish to continue combating the lack of protection which opens the way to discrimination. The campaign for the ratification of the Convention must continue beyond the Convention's entry into force.

37. The Special Rapporteur encourages the States meeting in Durban to establish programmes facilitating migrants' access, without discrimination, to basic social services, including primary education and health care.

38. We must combat the use of the law to discriminate against any one whomsoever. In particular, in the area of interest to her, the Special Rapporteur appeals to States to dismantle the barriers that prevent migrants and people in general from enjoying equality before the law by ensuring that protection and defence mechanisms function in an egalitarian manner and without discrimination based on race, origin, sex or religion. The Special Rapporteur believes there is an urgent need for action to ensure that violations of the human rights of migrants, whether in regular or irregular situations, are reported in order that they might be effectively combated.

39. The Special Rapporteur encourages institutions such as the ombudsman in all countries where they exist to ensure that violations of migrants' human rights are reported and legal

proceedings instituted against those responsible reach the highest levels of national systems of justice, in the interest of effectively combating the discrimination suffered by migrant men and women in many countries.

40. The Special Rapporteur wishes to draw States' attention to the need for policies which guarantee the integration of migrant women in all sectors and which put an end to possibilities of discrimination and abuse. Steps must be taken to guarantee the enjoyment of all rights by all sectors, in particular migrant women, who are doubly vulnerable in many societies based on their status as both women and migrants.

41. Concerning discrimination, racial discrimination, xenophobia and intolerance by certain police officers and border guards, the Special Rapporteur appeals to the States to train their police officers and border guards at ports and airports through awareness-raising campaigns designed to end the rigid prejudices that lead to flagrant human rights violations in countries throughout the world every day. More and more migrants, including tourists who have no intention of remaining in the receiving or transit country, are suffering racial discrimination and xenophobia because of their national or ethnic origin. The presumption of innocence must apply to all, including alleged offenders who are nationals.

42. Regarding the traffic in migrants, studies should be conducted to shed light on how racism, racial discrimination, xenophobia and forms of intolerance affect these people. The Special Rapporteur wishes specifically to draw attention to prejudice against migrant women who have fallen into the hands of traffickers, who are regarded and treated as criminals with no attempt made in the host or transit country to identify the causes of their situation.

43. The Special Rapporteur appeals to the media in countries throughout the world to remember that migrants are human beings before condemning any behaviour. While understanding the need for promptness in producing the news, the Special Rapporteur encourages the media, especially now when migration is being viewed irrationally in many States, to delve into the causes of migration and study the question seriously, thus helping to protect the human rights of migrants.